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PLAYBOY GRANTED PRELIMINARY INJUNCTION IN META TAG CASE

On September 8th, Playboy Enterprises, Inc. was granted a preliminary injunction against an Internet pornography site publisher operating sites under the domain names playboyxxx.com and playmatelive.com. In addition to the use of the trademarks in the domain names, the defendants embedded the word "Playboy" and other trademarks owned by PEI in the meta tag keyword portion of their web sites. The use of the trademarks was invisible to the user, but would misdirect search engine users looking for the real Playboy to defendants' sites. The court found that PEI would be likely to succeed on the merits in proving trademark infringement, unfair competition, and false designation of origin and false representation. The full order may be found at:
http://www.ljx.com/LJXfiles/metatagsuit.html

FREE: MACINTOSH LAW OFFICE SOFTWARE PRODUCT GUIDE

Apple Computer has announced that the Apple Small Business Marketing Group has published a free book for attorneys entitled "The Macintosh Law Office Software Product Guide." The guide is more than 70 pages in length and lists over 100 legal software packages. The book may be ordered singly or in quantity by e-mailing s.line.order@apple.com or by calling 800-825-2145 (the part number is L02531A).

THE BATTLE OVER SAFE CONTINUES

Early in September, key provisions of the Security and Freedom through Encryption Act (SAFE) were gutted, reversing its purpose of lifting export controls on strong encryption technology. The House Committee on National Security voted 45-1 in favor of the revised legislation which included an amendment requiring the President to establish a maximum level of encryption that could be exported from the U.S. without harming national security. Products no stronger than that maximum could be exported after passing a one time review by the departments of Commerce and Defense. The House Intelligence Committee, in its review of the bill, also voted to amend it by requiring key escrow backdoors for the government. Text of the amendment at: http://jya.com/hr695-amend.htm

The House Commerce Committee, taking its crack at the bill, voted on September 24th to pass a more market friendly encryption bill, voting down an amendment that would have imposed strict domestic controls on encryption and given law enforcement authorities "keys" to unlock encrypted material. The amendment had been strongly pushed by the FBI.

The bill's next painful inspection will come at the hands of the House Rules Committee which will determine in what form, if any, the bill will reach the House floor. For the text of the original bill, enter the bill # (H.R. 695) at http://thomas.loc.gov/home/c105query.html

POSTAGE ON DEMAND ONLINE: THE ADVENT OF THE E-STAMP

Microsoft and AT&T are lending their clout to E-Stamp Corp., each of them having put up a 10% stake in the company. E-Stamp states that it is the first company which has developed a secure Internet-based software solution which will permit customers to purchase postage electronically and print it on envelopes. They have submitted their proposal to the U.S. Postal Service and will beta test the system in San Francisco and Washington D.C. by the end of this year. Once postage is

purchased via the Net, the stamps' value will be held in an "electronic vault" attached to a PC and a printer. The complete system is estimated to cost consumers less than $300 per year. Further information available at http://www.estamp.com

FIRST JUDICIAL OPINION WITH HYPERLINKS ISSUED

Judge David A. Baker, an Orlando federal magistrate, has issued what his clerk calls the first judicial opinion with hyperlinks. The opinion in this patent infringement case contains links to patent drawings and related exhibits. The case can be found at: http://www.fedjudge.org/tech.htm

MINNESOTA UPHOLDS INTERNET JURISDICTION IN ONLINE GAMBLING CASE

On September 5th, the Minnesota Court of Appeals upheld the lower court's decision in the Granite Gate Resorts online gambling and jurisdiction case. The court found that Granite Gate had solicited business from Minnesota residents through Internet ads in its Wager Net gambling site and had multiple contacts with Minnesota residents. These contacts were held sufficient to confer personal jurisdiction. The text of the decision may be found at:
http://www.courts.state.mn.us/library/archive/ctappub/9709/c69789.htm

MASSACHUSETTS DECLARES TAX FREE ZONE

Massachusetts signed into law, on September 2nd, legislation exempting online services from having to collect and remit the state's five percent sale tax for a period of two years. By passing this legislation, Massachusetts joins other hi-tech states such as California, Washington, and Florida in encouraging in-state Internet Service Providers to promote electronic commerce. State by state summaries of the current status of Internet taxation may be found at: http://www.vertexinc.com

MICROSOFT NEWS: INTERNET EXPLORER 4.0 AVAILABLE SEPTEMBER 30/AOL BECOMES PARTNER/WINDOWS 98 DELAYED

Microsoft IE 4.0, the newly released version of the Internet browser, features daily America Online content. AOL has become an Active Channel Partner with Microsoft. Microsoft announced on September 15th that it would delay the delivery of Windows 98 until the second quarter of 1998, to allow for a single upgrade version which will migrate users of both Windows 3.x and Windows 95 to the new operating system. Further information available at: http://www.microsoft.com

JAPANESE ISP SUES PAGING AMERICA

Typhoon, Inc., a Tokyo based ISP, filed suit in a Los Angeles federal court against Paging America. Typhoon alleges that Paging America flooded Typhoon's servers with e-mail ads which included false Typhoon return addresses. Typhoon charges violations of the Electronic Communications Privacy Act, trespass to and misappropriation of its equipment, unfair competition, and false designation of origin.

NETCENTER: NETSCAPE'S NEW COMMERCE CENTER

Netscape has introduced Netcenter, a free business and professional service, on its web site. The service includes Netscape Industry Watch, Netscape Professional Community, and Netscape SmartUpdate. Though the service is free, users must register before they may customize the service for personal and professional use. VeriSign is providing the security for online transactions and communications. Currently, more than 1000 Netscape content and business partners can be accessed through Netcenter. Netscape hopes that Netcenter will help one of the world's leading Internet sites become an electronic commercial hub. http://www.netscape.com

MCAFEE SYMANTEC SUIT ENDS, BUT ONLY IN JAPAN/U.S. CASE UPDATE

Symantec Japan apologized for issuing news releases incorrectly asserting that Symantec had won its copyright suit against McAfee. McAfee responded by dropping its defamation suit in Japan on August 24th. Both firms are still embroiled in litigation in the United States, where Symantec alleges that McAfee "misappropriated" antivirus program code and McAfee is suing Symantec for $1 billion, charging "defamation and trade libel." In the U.S., a judge has ordered McAfee to preserve evidence in the case. McAfee admitted earlier this year that an employee brought Symantec proprietary materials to McAfee which were later destroyed. The judge has ordered McAfee to make available to Symantec all computer hard disks in which that employee worked, to refrain from making any changes to the disks and to respond to Symantec's discovery requests on an expedited basis. For further information: http://www.symantec.com and http://www.mcafee.com

MY ENEMY, MY FRIEND: MCAFEE AND SYMANTEC ALLIED AS DEFENDANTS

McAfee Associates Inc. and Symantec Corp., which have been embroiled in a long standing series of legal battles, now find themselves allied as defendants in a patent infringement suit filed by Hilgraeve, Inc. Hilgraeve, the developer of the HyperTerminal program that comes bundled with Windows 95 and Windows NT, alleges in its suit that both companies infringed upon its patent for in-transit anti-virus detection technology. Hilgraeve received the patent in issue in 1994. The patent covers the technology behind Hilgraeve's HyperGuard utility for searching for virus signatures in data while it is in transit over networks. HyperGuard is designed to prevent virus infection from files downloaded over the Internet. The suit states that Hilgraeve offered to license HyperGuard technology to third parties, including McAfee and Symantec, last year. IBM Corp. did purchase a license, but McAfee and Symantec did not. For further information:
http://www1.zdnet.com/uk/news/ns-2784.html

IETF ASKS RSA TO SURRENDER ENCRYPTION PATENTS FOR CERTIFICATION

On August 28th, Internet Engineering Task Force officials asked RSA Data Security Inc. to surrender patents on data scrambling technology in exchange for certifying the technology as an Internet standard for e-mail encryption. This is the latest move in the battle between rivals RSA, a corporate security fixture, and Pretty Good Privacy Inc., the favorite of many private individuals, small businesses and open standards advocates. PGP has committed to assisting development of a free, open PGP standard, an idea which RSA officials have rejected, making it unlikely that PGP will win IETF approval. RSA controls more than 80 percent of the U.S. market for the most popular form of commercial encryption and has asked the IETF to make the technology a standard publicly available.Microsoft Corp. and Netscape Communications Corp. have already adopted the technology in their Internet browser and e-mail suites. However, RSA officials also want to collect license fees for licensing their patents - a practice which would violate traditional notions of Internet standards. More information can be found at: http://www.ietf.org, http://www.rsa.com, and http://www.pgp.com

OYEZ, OYEZ, OYEZ: 'PEOPLE'S COURT' DEBUTS ON THE WEB

Web users can now watch simulcast versions of TV's "People's Court" starring Ed Koch, the feisty and colorful former mayor of New York City, presiding over cases on the Warner Bros. web site. Regular shows are broadcast twice a day, three days a week. Trial portions are taped but there are live wrap-around commentary segments presenting the input from the web. To check out the promo and find the next broadcast: http://www.peoplescourt.com

SPAM VICTIM SUES ALLEGED PERPETRATOR

A student at the University of Colorado has sued Greentree Mortgage Company, a N.J. corporation, alleging that the company sent thousands of unsolicited e-mail messages to people using his address in the "From" field. Thousands of angry e-mail messages were sent to the student, who has posted his own lawsuit web page at: http://www.cs.colorado.edu/~seidl/lawsuit

SPAM VICTIM IN TEXAS GETS TEMPORARY INJUNCTION/TRIAL SET

An Internet author in Texas was granted a temporary injunction against a California college student and his company forbidding them from using the author's or anyone else's domain name in spam mailings. The plaintiff received more than 5000 irate messages from people who had received spam mailings offering information on "Free Cash Grants" for $19.95, all of the mailings showing the plaintiff's return address of flowers.com. Trial has been set for November 10th.

WHITE HOUSE LOOKS FOR WAYS TO SHUT DOWN WHITE HOUSE XXX SITE

The official White House is not amused by a pornographic site whose domain name is perilously close to its own. Whitehouse.com is a pornographic parody of the Clinton White House which contains links to some very hard core sites and is now generating over 30,000 hits a day. The White House is investigating legal action to shut it down. The official White House web page is at: http://www.whitehouse.gov The parody web page is at: http://www.whitehouse.com

AMENDED COMPLAINT FILED IN JUNGER ENCRYPTION CASE

In the wake of last month's decision in Bernstein v. U.S. Department of State, in which a federal district court declared unconstitutional federal regulations which forbid the publication of encryption software on the Internet, attorneys for Professor Peter Junger of Case Western Reserve University Law School have filed an amended complaint in his suit to enjoin the government from enforcing the same regulations. The amended complaint names Secretary of Commerce Daley as the primary defendant and seeks the right to publish a number of encryption programs on the Professor's web site as part of his course materials, which right is currently unavailable under the present Export Administration Regulations. The complaint alleges that the regulations violate the First Amendment, particularly by imposing prior restraints such as licensing requirements. The amended complaint may be found at: http://jya.com/pdj3.htm

VIRTUAL INTERNET OFFERS GLOBAL DOMAIN NAME SEARCH SERVICE

Virtual Internet, which claims to be Europe's largest domain name registrar, is now offering a free "Global Name Search Service" which it says can search 400 top level domains simultaneously, allowing firms to check for trademark infringements in seconds, as well as providing a tool for assessing the availability of any domain name worldwide. Virtual's site is located at: http://www.vi.net

AOL/WORLDCOM/COMPUSERVE: A COMPLEX DEAL

On September 7th, a complex deal was announced, the major portions of which include the following: 1) WorldCom will buy the 80% of Compuserve that H & R Block owns; 2) WorldCom will purchase AOL's ANS Communications; 3) WorldCom will keep Compuserve's network services, but give AOL the 2.6 million customer roster of Compuserve's Interactive Services and 4) AOL will receive from WorldCom greatly expanded network capacity at a good price. AOL assured Compuserve members that the two online services would be run separately, though that assurance was greeted with skepticism from critics who believe the merger of the two services is just a matter of time and placating the antitrust concerns of the Justice Department. For further information: http://www-db.aol.com/corp/news/press/view?release=215

APPLE ACQUIRES CORE ASSETS OF POWER COMPUTING

Apple Computer and Power Computing announced in a joint press release on September 2nd that Apple has acquired the "core assets" of Power Computing which is the leading Mac clone vendor. The deal will give Apple a direct marketing outlet. The press release may be found at: http://product.info.apple.com/pr/press.releases/1997/q4/970902.pr.rel.powercc.html

INFOSEEK RECEIVES SEARCH TECHNOLOGY PATENT/LYCOS MAY FOLLOW

Infoseek Corp. has been granted a patent covering a new approach to cataloging Internet content

by means of a technology called "distributed searching," in which results of a user query are compiled by instantly polling search engines at individual Web sites. Most search engines compile lists of Internet content by using automated "spiders" or "bots" that search out new Web listings and include the references in a central database that is the main reference used to produce search results. Infoseek competitor Lycos Inc. has announced that it received a "notice of allowance" from the U.S. Patent and Trademark Office, indicating that it likely will be granted patent rights for some aspects of the spider technology commonly used by today's navigation services. Neither company has indicated whether they will develop efforts to generate royalty payments from their patent rights. Infoseek's new capacity will allow it to act as an aggregator of search results for new Web postings, particularly those published by news organizations that typically offer search capabilities within their sites. For further information on the Infoseek patent, see
http://software.infoseek.com/patents/dist_search/index.htm

NEW YORK TIMES CRITICIZED FOR ETHICS LAPSE ON WEB SITE

The New York Times is being accused of violating journalistic ethics on its web site. These charges followed the newspaper's announcement that it will, in mid-October, begin to link its book reviews to the Barnes & Noble Inc. web site, probably from links at the bottom of reviews. The Times will collect an undisclosed percentage of sales generated from the links. Critics say that the Times has a clear conflict of interest between editorial content and advertising. The Times says that readers recognize journalistic integrity, and can distinguish between advertising content and objectively written news content. Further information at:
http://www5.zdnet.com/zdnn/content/zdnn/0911/zdnn0001.html

FREE BROWSERS BECOME STANDARD

Netscape Communications Corp. is giving away its Navigator 4.0 browser to leading Internet service providers to counter the unveiling of Microsoft Corp.'s Internet Explorer 4.0 at the end of September. Netscape normally charges ISPs royalties on a sliding scale, from about $4 to $15 per copy, depending on the volume of sales. The fee is unpopular among large ISPs because copies of Navigator can be easily obtained for free from other sources on the Web. Some providers even point their customers to such sites to avoid paying royalties to Netscape. On Aug. 18, Netscape launched a new campaign called "Netscape Everywhere" designed to distribute more than 100 million copies of its client software to home users around the world within the next 12 months. Netscape signed agreements with more than 100 ISPs, original equipment manufacturers and telecommunications companies for distribution. Among them are Bell Atlantic Internet Solutions, AT&T WorldNet Service, Ameritech.net and Sprint Internet Passport. Many ISPs, reluctant to take sides, are offering both browsers. Further info at: http://www.microsoft.com and
http://www.netscape.com

BORLAND AND MICROSOFT SETTLE EMPLOYEE RAIDING SUIT

Borland International Inc. and Microsoft Corp. announced September 19th that they have settled a lawsuit in which Borland accused Microsoft of stealing its employees. A joint statement by both companies said that the settlement was in the best interest of both companies and would allow them to move forward. The companies have agreed not to discuss details of the settlement. The Borland suit accused Microsoft of "systematically raiding" its personnel by means of lavish signing bonuses, sabbaticals and vacations. Borland said it lost 34 key software architects, marketing managers and engineers to Microsoft over 30 months. For further info:
http://www.news.com/News/Item/0,4,14432,00.html

INTERNET FRAUD UP 300 PERCENT

The National Consumers League has instituted an Internet Fraud Watch on its web site to monitor the development of Internet fraud schemes, old and new. According to the NCL, Internet fraud is up 300 percent. The NCL will accept Internet fraud reports and forward them to more than 150 law enforcement agencies in the U.S. and Canada. The site is located at: http://www.fraud.org/ifw.htm

CYBER PROMOTIONS DISCONNECTED BY AGIS/COURT ORDERS RECONNECTION

On September 19th, Cyber Promotions, the king of spamming, companies was disconnected by its ISP, AGIS.. AGIS reported that they were disconnected "due to ongoing security issues and other related matters." Reportedly, Cyber Promotions was under "ping" attack (sending so many ping requests per second to a host that it cannot handle legitimate traffic) from those it spammed, and the attack was bringing down AGIS' network. Cyber Promotions claims that AGIS has the ability to filter out such attacks and asked a court to order that AGIS reconnect its site. Cyber Promotions set up a temporary site via a link from BBN Planet but that site quickly became inoperative. The site, if it is operative from any source (which it was not at the time of publication), is http://www.cyberpromo.com A statement from AGIS may be found at: http://www.agis.net As "Bytes in Brief" went to press, industry sources report that a federal court judge in Philadelphia has granted Cyber Promotions a temporary preliminary injunction which requires AGIS to reconnect Cyber Promotions until October 16th.

SPA LAUNCHES E-COMMERCE ONLINE GUIDE

The Software Publishers Association has launched its Electronic Commerce Web Resource, an online guide for companies planning to conduct business on the Internet. The site details the current applicable laws and regulations in all 50 states and many countries, covering such issues as taxation, encryption, import/export, privacy, and copyright. The e-commerce site may be accessed at: http://www.spa.org

INTEL SUBJECT OF FTC "BUSINESS PRACTICE" PROBE

Intel announced on September 24th that it has been notified by the Federal Trade Commission of an investigation into its business practices and promised "full cooperation" with the inquiry. Intel received a very general subpoena stating that it is being investigated for unfair and deceptive practices or acts in violation of the Federal Trade Commission Act. These cover such things as monopolistic activities, price competition, and non-competitive pricing. Competitors Digital Equipment Corp.(currently involved in a patent infringement suit with Intel) and Advanced Micro Devices, Inc., were served with subpoenas as part of the FTC's investigation. The companies have declined to comment on what they have been asked to provide the FTC or whether they asked the FTC to investigate. A 1991-93 FTC investigation of Intel was closed with a finding that the company had engaged in no wrongdoing. For further info: http://www.intel.com/pressroom/archive/releases/cn092497.htm

IAB STUDY INDICATES BANNER ADS ARE WORKING

A study released on September 24th by the Internet Advertising Bureau suggests that banner ads on the Net are working - the IAB research indicates that online campaigns can raise advertising effectiveness and brand awareness by 30 percent, and may even out-perform television for first-time exposure. One of the more surprising of the study's findings indicates that the majority of the brand campaign enhancement comes from banner exposure, not actually clicking on the banner. Previous wisdom looked to see the number of users who clicked on the banners, but it appears that the banners themselves may be the most effective form of advertising. The IAB web site is located at: http://www.edelman.com/IAB/index.html

CANADA ADOPTS UNIFORM ELECTRONIC EVIDENCE ACT

The Uniform Law Conference of Canada has adopted in principle a Uniform Electronic Evidence Act, which provides for admission of electronic evidence which complies with the best evidence rule and is properly authenticated. It establishes a number of criteria for according electronic records a presumption of integrity. The Act is a model act, without force of law until enacted by the provinces or the federal government. The Act, available in French and English with commentaries, is available at: http://www.law.ualberta.ca/alri/ulc/current/eueea.htm

KESMAI SUES AMERICA ONLINE

Kesmai Corporation announced that it filed, on September 29th, a suit against America Online (AOL) for violation of the federal antitrust laws, federal and state trademark laws, and unfair competition laws. The suit, filed in the United States District Court for the Eastern District of Virginia, charges AOL with using its monopolistic control of online services and Internet access to prevent small content providers from being able to compete fairly. AOL recently acquired Kesmai competitor ImagiNation Network and relaunched it in June under the name WorldPlay. giving them sole "anchor tenant" status and control of the basic management, programming and promotion functions on the AOL Games Channel. Kesmai alleges that games companies were forced to become subsumed under their competitor's brand (WorldPlay) or leave the AOL service altogether. According to Kesmai, AOL re-designed its Games Channel interface to create the false impression that Kesmai games are WorldPlay games, and gave WorldPlay control of promotion and programming. As a consequence Kesmai alleges that, as the previous primary supplier of multiplayer games to AOL, it has been severely damaged.

CHILD PORN LAW APPEAL BRIEF FILED

On September 29th, free-speech advocates filed a federal appeals court brief seeking to overturn a law that makes it a crime to publish or transmit images that purport to portray children involved in sexual acts. Arguing that "sexually explicit, non-obscene speech is protected by the First Amendment," William Bennett Turner, a noted First Amendment attorney, filed a brief with the 9th US Circuit Court of Appeals challenging the constitutionality of the 1996 Child Pornography Protection Act. The law was upheld in federal district court in August. Turner's amicus brief was filed in conjunction with the American Civil Liberties Union in support of the major plaintiff in the case, the Free Speech Coalition. Further information is expected to be available in early October on the First Amendment Center's site at http://www.fac.org

CALIFORNIA SEX OFFENDERS IDENTIFIED ON NET

The Attorney General of California has recently ruled that a web site's posting of the whereabouts of convicted sex offenders does not violate the state's penal code. The site had over 17,000 visitors in the first week of its existence. Currently, information is provided by volunteers who visit their local police stations to secure the names of convicted sex offenders who reside in their locality. The site intends, as it expands, to include photos, and expresses the hope that a sympathetic law enforcement officer will anonymously provide the site's owner with a copy of the official CD-ROM which lists all 64,000 registered California sex offenders. The site may be found at: http://www.sexoffenders.net

INTERNET GAMBLING PROHIBITION BILL INTRODUCED

Rep. Goodlatte has introduced The Internet Gambling Prohibition Act of 1997 (H.R. 2380) in the House of Representatives. The bill, which was referred to the Committee on the Judiciary, would impose fines and possible prison sentences for anyone who knowingly uses a communication facility for the transmission or receipt in interstate or foreign commerce of bets or wagers. Various exceptions are noted in the bill. The text of the bill may be found by entering the bill number at: http://thomas.loc.gov/home/c105query.html

PASSIVE NET ADVERTISING INSUFFICIENT TO CONFER JURISDICTION

A federal court in New Jersey held on September 12th that passive Internet advertising is insufficient to confer personal jurisdiction over a foreign defendant. In Weber v. Jolly Hotels, et al, the plaintiff slipped and fell while a guest at one of Defendant's hotels in Italy. The Defendant conducts no business in New Jersey, but does have an Internet site which shows photographs of hotel rooms, provides a general description of facilities, etc. The court indicated that passive web sites which merely provide information or advertisements, without any other interaction between the parties, should not be sufficient to confer jurisdiction. The court noted that any other decision would confer worldwide personal jurisdiction over anyone who establishes an Internet web site. The decision may be found at: http://home.dti.net/bdpc/jolly.htm

PGMEDIA SUES TO OPEN DOMAIN NAME REGISTRATION MARKET

PGMedia, Inc. announced that it has filed a lawsuit in federal court in New York City against Network Solutions, Inc. seeking, among other things, to open access to the domain name registration market, and to allow open, unrestricted competition for the offering of Domain Name registration under potentially limitless top level domains. PGMedia charges NSI with violating antitrust laws in restricting the domain name registration market and says it will add the National Foundation as a defendant in the suit, alleging that it has injected itself into the dispute by claiming on behalf of the U.S. government that it controls the domain name system. The complaint may be found at: http://namespace.pgmedia.net
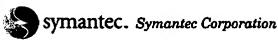
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NEWS RELEASE

company index

Symantec buys key security technology patent, records first quarter charge

No Change to Non-GAAP Outlook.

August 18, 2003, Cupertino, Calif: Symantec Corp. (Nasdq:SYMC), the world leader in Internet security, today announced that it purchased a key security technology patent asset from Hilgraeve, Inc., based in Monroe, Michigan. U.S. Patent Number 5,319,776 covers in-transit scanning for malicious code.

"This is a patent that is fundamental to several security technology defenses, including antivirus technologies, and it is an essential part of providing comprehensive protection against the growing number of threats," said John W. Thompson, Symantec chairman and chief executive officer. "In-transit scanning of multiple security signatures is a must-have component of an effective security solution and by purchasing this patent we are making sure that Symantec's products, technologies and customers are protected today and in the future."

Symantec purchased the patent as part of a settlement in Hilgraeve, Inc. vs. Symantec Corporation. As part of the settlement Symantec also received licenses to the remaining patents in Hilgraeve's portfolio, including patents related to data communications.

The total cost of purchasing the patent and licensing additional patents from Hilgraeve, Inc. is $62.5 million. This is a subsequent non-recurring event to the financial results for the fiscal first 2004 quarter, ended July 4, 2003, and results in an adjustment to the previously reported first quarter results. The financial impact of this settlement on GAAP net income for the fiscal first quarter is $9.5 million and the impact on earnings per share is $0.05, resulting in revised GAAP net income for the fiscal first quarter of $59 million and revised earnings per share of $0.36. Non-GAAP results are not affected by the patent settlement, as it is a non-recurring event and is excluded from the calculation of non-GAAP results.

Symantec's forward-looking guidance for the fiscal second quarter 2004, ending Oct. 3, 2003, has not changed. As previously stated:

- Revenue is expected to be in the range of $375 to $395 million.
- GAAP earnings per share is expected to be $0.38 at the midpoint of the revenue guidance.
- Non-GAAP earnings per share is expected to be $0.41 at the midpoint of the revenue guidance.

Management offers the following forward-looking guidance for fiscal year 2004, ending April 2, 2004, updated to reflect the actual results from the fiscal first quarter, estimated results for the fiscal second quarter, and the financial impact from the patent settlement:

- Revenue is expected to be approximately $1.665 billion, as previously stated.
- GAAP earnings per share is expected to be $1.75 at the stated revenue forecast. This is revised from $1.82.
- Non-GAAP earnings per share is expected to be $1.96 at the stated revenue forecast, as previously stated.

Non-GAAP earnings per share excludes the amortization of intangibles, restructuring charges from acquisitions and patent settlement costs of approximately $7 million and $37 million for the quarter ending Oct. 3, 2003 and the fiscal year ending April 2, 2004, respectively. Investors are encouraged to review the more detailed reconciliation of these non-GAAP financial measures to the comparable GAAP measures, which can be found on the investor relations Web site at www.symantec.com/invest/center.html

Other releases from Symantec

Patently Obvious™   ...powered by   ◉ M·CAM™

Intellectual Property Analysis of Symantec's Virus Definition Update Technology
U.S. Patents Nos. 6,052,531 & 6,167,407
May 25, 2001

Background

On February 7, 2001, Symantec Corporation (Nasdaq: SYMC) announced that it had secured two United States Patents for its automated virus definition update technology. This technology is a key component of Symantec's Norton AntiVirus™ software suite.

According to market research by IDC, sales of anti-virus and other computer security software are expected to reach $5 billion annually by the year 2003.[1] This rise in demand for these products can be attributed to the increased amount and sophistication of newly released computer viruses. As more businesses rely on computer systems for mission critical operations, such protection continues to increase in importance.

Symantec enjoys a large share of the anti-virus and computer security software market. Its chief competitors include Computer Associates, F-Secure, Network Associates, Parsons Technology, and Trend Micro. Symantec's U.S. Patents Nos. 6,052,531 and

Patents Under Consideration (in order of filing)

Assignee	U.S. Patent	Title	Filed	Issued	Expires
General Electric	3,396,723	On-line modification of computer programs	7/3/74	7/13/76	1993
Xerox	4,558,413	Software version management system	11/21/83	12/10/85	2003
IBM	4,714,992	Communication for version management in a distributed information service	11/26/85	12/22/87	2005
Network Associates	6,151,643	Automatic updating of diverse software products on multiple client computer systems by downloading scanning application to client computer and generating software list on client computer	6/7/96	11/21/00	2016
Neuromedical Systems	5,948,104	System and method for automated anti-viral file update	5/23/97	9/7/99	2017
Trend Micro	6,119,165	Controlled distribution of application programs in a computer network	11/17/97	9/12/00	2017
Network Associates	6,035,423	Method and system for providing automated updating and upgrading of antivirus applications using a computer network	12/31/97	3/7/00	2017
Symantec	6,052,531	Multi-tiered incremental software updating	3/25/98	4/18/00	2018
Symantec	6,167,407	Backtracked incremental updating	6/3/98	12/26/00	2018

6,167,407 (hereinafter '531 and '407, respectively) claim important innovations used to automatically update an anti-virus program's virus definition files. This functionality is a vital component of most modern releases of anti-virus software, including Network Associate's McAfee VirusScan, as it provides a mechanism to protect computers soon after a new virus is discovered.

M·CAM has conducted an intellectual property analysis of Symantec's '531 and '407 patents to determine their strength and defensibility in the face of prior and concurrent art innovations. Using M·CAM DOORS™, the innovation space surrounding the '531 and '407 patents was examined to identify patent claims that may show weaknesses in Symantec's patents.

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[1] Symantec's 2000 Annual Report.

Intellectual Property Analysis

Technology in '531 and '407

The two Symantec patents, '531 and '407, claim (among other things) a software system on a computer to query a centralized source (i.e., a server) to check for any updates to the software package. If an update is located, the software system then retrieves any necessary files and updates the software system accordingly. These updates can be scheduled to run automatically by the client machine (personal computer, workstation, or server). The language of the claims is deliberately broad, as to include as much "landscape" as possible. However, the intended use for these patents, as shown in Symtanec's Norton AntiVirus™ products, is for the automatic updates of virus definition files and related system files in an anti-virus software system.

A look at the important independent claims in the '531 and '407 patents will help illustrate the primary innovation(s) asserted by Symantec. Some of the more integral claims language is shown in **bold**.

Excerpts of claims 1 and 15 from Symantec's '531 patent	*Excerpts of claims 1 and 8 from Symantec's '407 patent*
1. **A system for transforming a computer readable file of a beginning state to a computer readable file of an ending state**, where the beginning state and the ending state are both states within a sequence of states associated with the computer readable file, the system comprising:...	1. **A method for facilitating updating of a computer readable file to a final state**, the final state being a state within an ordered sequence of states associated with the file, the sequence including at least one hub state, the method comprising the steps of:
at least one **update data source**, each update data source having access to at least one of the update patches, **each update data source being disposed to receive a request which is associated with one of the update patches, for transmitting the update patch associated with the request**; and	determining as a final hub state a hub state which is at least as early in the sequence as the final state; for each hub state which is earlier in the sequence than the final hub state, making available a hub incremental update containing information about differences between that hub state and the final hub state; and responsive to the final hub state not being the final state, making available a **final incremental update containing information about differences between the final hub state and the final state.**
a **client coupled to each update data source** and having access to the computer readable file, disposed to **receive transmitted update patches from each update data source**, for determining a sequential set of update patches which specify information for transforming the computer readable file from the beginning state to the ending state.	8. A method for updating a computer readable file of an original state to a final state, the file of the original state residing on a local computer system, the original state and the final state being states within an ordered sequence of states associated with the file, the final state being later in the sequence than the original state, and the sequence including a final hub state which is not preceded in the sequence by the final state, the method comprising the steps of:
15. **A computer implemented method for transforming a computer readable file of a beginning state to a computer readable file of an ending state** using available update patches, the beginning state and the ending state both being states within a sequence of states associated with the computer readable file, each update patch having a first state and a second state associated therewith, the first state of each update patch preceding in the sequence of states the second state of that update patch, and **each update patch specifying information about differences between the first state and the second state** associated with that update patch, the computer implemented method comprising the steps of:	**accessing from a local storage location** a file of an original hub state, the original hub state being a hub state in the sequence which is not preceded in the sequence by the original state;
determining a sequential set of update patches from those available such that the first state associated with the initial update patch in the sequential set of update patches ...	responsive to the original hub state not being the final hub state:
requesting each update patch in the sequential set of update patches from at least one update data source, wherein each update data source has access to at least one of the available update patches, and is disposed to receive the request and transmit the requested update patch;	**accessing a hub incremental update containing information about differences between the original hub state and the final hub state;**
receiving each requested update patch in the sequential set of update patches from at least one update data source; and	using the hub incremental update and the file of the original hub state to produce a file of the final hub state; and
producing a computer readable file of the ending state by using each update patch in the sequential set of update patches to transform the computer readable file from the first state associated with the update patch to the second state associated with the update patch.	storing the file of the final hub state; and
	responsive to the final hub state not being the final state:
	accessing a final incremental update containing information about differences between the final hub state and the final state;
	using the final incremental update and the file of the final hub state to produce a file of the final state; and soring the file of the final state.

A Look at Uncited Prior Art

Using M·CAM DOORS™, several examples of uncited prior art were identified that may limit the strength and breadth of the '531 and '407 patent claims. Excerpts from patents held by General Electric, Xerox and IBM are provided to illustrate the similarities in innovation in this technology space. Interestingly, the '407 patent only cited four patents from the hundreds of patents involving automated software updates. Key similarities are shown in **bold**.

Excerpt of claims from General Electric's U.S. Patent No. 3,969,723	Excerpt of claims from Xerox's U.S. Patent No. 4,558,413,	Excerpt of claims from IBM's U.S. Patent No. 4,714,992
1. In a controlled equipment system of the type operable in response to signals resulting from logical operations based upon operating parameters of the controlled equipment, a control system comprising: a. a programmable controller including a store having stored therein an executive program serving to, 1. **direct on-line communication between said controller and equipment external thereto,** and 2. simulate an equipment control circuit having a format comprised of a plurality of logic strings, each logic string comprised of a conductor including at least one switch element disposed in a designated position and a continuity status means controlled by the condition of the switch elements of its associated logic string, said continuity status means serving to effect output signals from said controller to the equipment external thereto; and, b. a programming console in communication with said controller comprising: 1. **means for specifying to said controller a one of the simulated logic strings to be modified,** 2. **means for directing said controller to copy the simulated specified logic string into a predetermined region in said store while retaining the specified logic string in the executive program,** 3. means for specifying to said controller a position in the conductor of the logic string copied, 4. **means for modifying the copied logic string by specifying to said controller a type of switch element,** 5. means for directing said controller to test the modified logic string on-line as a part of the executive program in place of the retained specified logic string, and 6. means for directing said controller to replace the retained specified logic string with the modified logic string while **maintaining the modified logic string on-line** whereby the modified logic string becomes an integral part of the executive program to control the external equipment in accordance with the logic now defined by the modified logic string.	1. **A software version management system for automatically collecting and recompiling updated versions of component software objects comprising a software program for operation on a plurality of personal computers coupled together in a distributed software environment via a local area network** and wherein said objects include the source and binary files for various of said software program and are **stored in various different local and remote storage means** through said environment, said component software objects being periodically **updated via environment editing means by various** users at said personal computers and stored in designated storage means, said system including: models comprising system objects, each of said models representative of the source versions of a particular component software object, each of said models containing object pointers including a unique name of the object, a unique **identifier descriptive of the chronological updating of its current version,** information as to an object's dependencies on other objects and a pathname representative of the residence storage means of the object, means in said editing means to notify said management system when any one of said objects is being edited by a user, means in said management system in response to notification of object editing to track said edited objects and alter their respective models to the current version thereof, said management system upon command adapted to **retrieve and recompile said** source files corresponding to said altered models and load the binary files of said altered component software objects and their dependent objects into said computers.	1. A method for **managing obsolescence of replicas of data objects, the objects being utilized in multiple nodes of a distributed processing system in which at least one node operates as an object source location** having access to a source database containing source data objects and a least one other node operates as an object replica location having means for storing replicas of **requested objects received from a source location,** each source data object being alterable whereby replicas of altered objects stored at replica locations may become obsolete, comprising the steps of: **responsive to a request from a first replica location to ascertain obsolescence of data objects,** extracting at the source location identifiers of a set of obsolete objects; communicating said identifiers, if any, as an atomic demand/response transaction to said first replica location; **rendering inaccessible at said first replica location any replicas corresponding to those identifiers received from the source location;** and **removing from the source location those identifiers communicated to said first replica location.** 3. A method for locating and rendering inaccessible obsolete versions of data objects, the objects being utilized in **multiple nodes of a distributed processing system** in which at least one node operates as an object source location having access to a source database containing source data objects and at least one other node operates as an object replica location having **means for storing versions of requested objects received from a source location,** each source data object being alterable whereby **a plurality of versions are created and versions stored at replica locations may become obsolete,** the relative obsolescence of each version at any time t being identifiable by a version number corresponding to its position in a temporal sequence, including an oldest version and a most recent version, among versions of source data objects comprising the steps at each source location of..

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Intellectual Property Analysis (contd.)

Technology Competitors

In addition to the aforementioned patents, a total of 660 other patents were identified by M·CAM DOORS™ to be closely related to the '531 and '407 patents. As shown in Figure 1, IBM Corporation is an important player in the field of anti-virus and computer security software, holding nearly fourteen percent of all patents in this innovation space.

While Network Associates holds over 15 U.S. Patents, these patents generally occupy a different innovation space as compared to the '531 and '407 patents. Regardless, Network Associates is clearly a competitor in the industry. Another of Symantec competitors, Micro Trend, holds 8 U.S. Patents.

Of particular interest are Network Associates' U.S. Patents Nos. 6,035,423 ('423) and 6,151,643 ('643) and Trend Micro's U.S. Patent No. 6,119,165 ('165). These related patents were being examined in the USPTO at the same time as '531 and '407.

Figure 1 - Companies and their Patent Holdings in the Innovation Space of Symantec's U.S. Patents 6,052,531 and 6,167,407

Company	Related Patents Assigned	Percent of Total
IBM	92	13.9
Sun Microsystems	26	3.9
Microsoft	21	3.2
Hewlett-Packard	20	3.0
Hitachi	20	3.0
Digital Equipment Corp	19	2.9
Motorola	17	2.6
Kabushiki Kaisha Toshiba	11	1.6
LSI Logic Corporation	11	1.6
Advanced Micro Devices	8	1.2
All Others	415	62.9
TOTAL	660	

Financial Information Through March 2000

Symantec (Nasdaq: SYMC), www.symantec.com			
	2000	**1999**	**1998**
Revenue	$745.7 Million	$633.9 Million	$578.4 Million
Net Income (loss)	$170.1 Million	$50.2 Million	$85.1 Million
EPS (diluted)	2.73	0.86	1.42

Intellectual Property Analysis (contd.)

Concurrent Art

Another important consideration of the innovation space is the quality and thoroughness of the original patent examination. Figure 3 lists the USPTO Classification Codes and the corresponding number of patents included in the '531 and '407 innovation space.

A total of 660 patents in the innovation space were filed before the '531 and '407 patents. The '531 patent's original field of search included USPTO Classifications 707, 395, and 712. The '407 patent's original field of search included USPTO classifications 707, 710, 345, and 360. These six classifications account for nearly 50 percent of all patents in this innovation space – a good indicator of patent examination strength. However, the field of search failed to capture other important classifications such as *Class 364 – Electrical Computers and Data Processing,* that are closely related to the technology in the '531 and '407 patents.

Figure 3- Top USPTO Classification Codes Represented in the M•CAM DOORS™ Innovation Space of Symantec's '531 and '407 Patents

Code	Description	Number of Patents	Percent of Total
395	INFORMATION PROCESSING SYSTEM ORGANIZATION	271	41.1
364	ELECTRICAL COMPUTERS AND DATA PROCESSING	112	17.0
709	ELECTRICAL COMPUTERS AND DIGITAL PROCESSING SYSTEMS: MULTIPLE COMPUTER OR PROCESS COORDINATING	35	5.3
379	TELEPHONIC COMMUNICATIONS	33	5.0
707	DATA PROCESSING: DATABASE AND FILE MANAGEMENT, DATA STRUCTURES, OR DOCUMENT PROCESSING	32	4.8
342	COMMUNICATIONS: DIRECTIVE RADIO WAVE SYSTEMS AND DEVICES (E.G., RADAR, RADIO NAVIGATION)	22	3.3
455	TELECOMMUNICATIONS	17	2.6
	All Others	138	20.9
	TOTAL	660	

(Note: Original U.S. Class codes are used.)

M·CAM's intellectual property analysis has identified four examples of concurrent art that may limit the strength and defensibility of '531 and '407. In addition to Network Associate's '643 and '423 and Trend Micros' '165 patents, Neuromedical System's U.S. Patent 5,948,104 (System and method for automated anti-viral file update) is an important consideration. Excerpts of the claims of these four patents are provided below. Key claim language is indicated in **bold.**

Excerpt of claims from Neuromedical System's U.S. Patent No. 5,948,104	Excerpt of claims from Network Associates' U.S. Patent No. 6,151,643	Excerpt of claims from Network Associate's U.S. Patent No. 6,035,423	Excerpt of claims from Trend Micro's U.S. Patent No. 6,119,165
1. A method for updating virus signature files of a computer system comprising the steps of: storing first and second update data on a portable storage medium to be installed to the computer system, the first update data including virus signature updating data, the second data including data that is regularly delivered to the computer system; installing the second update data to the computer system; and prompting a user of the computer system to decide whether or not to update the virus signature files with the first data. 11. A method for updating virus signature files of a computer system comprising the steps of: storing first and second update data on a portable storage medium to be installed to the computer system, the first update data including virus signature updating data, the second data including data that is regularly delivered to the computer system; installing the second update data to the computer system; and displaying to the user a first target drive and directory where the virus signature files are stored.	1. A computer-implemented method of providing information for software residing on a client computer, comprising: maintaining a service provider computer on a network, the client computer accessible over the network by the service provider computer; maintaining on the service provider computer a database, the database containing references to network locations where information relating to software from a plurality of software vendors can be obtained; maintaining on the service provider computer a downloadable application, the application being capable of performing a scan of the client computer to identify one or more software products residing on the client computer; establishing a communication link between client computer and the service provider computer over the network; downloading the application to the client computer over the communication link; scanning the client computer with the application; as a result of the scan, generating a list of software residing on the client computer for which the service provider has information; and for at least one product on the list, downloading to the client computer at least a portion of the information for that product that is available to the service provider.	1. A method for providing updated antivirus files to a plurality of client computers on a local area network, the client computers being supported by a common service computer on the local area network, the common service computer being operated by a system administrator, the method for providing allowing for minimal affirmative involvement by the system administrator in updating antivirus files on the plurality of client computers, the method for providing comprising the steps of: installing the updated antivirus files on a central antivirus server, said central antivirus server comprising: an antivirus database, said antivirus database comprising... a second field for storing the identity of the last updated antivirus file received by each of said plurality of computers on the local area network; transmitting the updated antivirus files from said central antivirus server to a push administration computer connected to the Internet... executing an automatic installation script at said service computer for automatically installing updated antivirus information on said plurality of client computers across the local area network; wherein said transmitting steps include... transmitting a first query from said push administration computer to said central antivirus server, said first query requesting an identity of updated antivirus files appropriate for the service computer; transmitting a first response from said central antivirus computer to said push administration computer identifying said appropriate updated antivirus files; and transmitting said appropriate updated antivirus files from said push administration computer to said service computer.	1. In a computer network including a remote server, an agent, and a client, a method comprising the steps of: the client attempting to connect to the remote server through the agent; the agent determining a characteristic of the client and providing a code module in response to the determined characteristic; the agent downloading the code module to the client, resulting in the code module residing at the client; the client executing the code module; the agent forming a connection to the remote server on behalf of the client; and the code module reporting to the client a status of an operation performed by the agent, the operation relating to the connection formed between the agent and the remote server.

Armed with greater detail on the innovation space surrounding the '531 and '407 patents, M•CAM focused on those patents most likely to present claims that would limit the strength and defensibility of these patents. Only after comparing the '531 and '407 patent claims with those of several closely related prior art documents, including but not limited to patents, can one make an informed opinion of the '531 and '407 patents. The results of this analysis have identified a group of patents that effectively "crowd" the innovation space of the '531 and '407 patents with closely related innovations in software version management and updating. This fact, coupled with the shortness of the innovation cycle in this industry, may limit Symantec's ability to effectively extract licensing revenue for these technologies over the long term.

Conclusion

M·CAM's intellectual property analysis has identified several examples of uncited prior and concurrent art that may limit the strength and defensibility of Symantec's U.S. Patents 6,052,531 and 6,167,407. Excerpts of claims from patents assigned to General Electric, Xerox, IBM, Trend Micro, Neuromedical Systems, and Network Associates were provided in this report to illustrate the similarities. In addition to these patents, the analysis included examination of prior and concurrent art patent claims from over 660 closely related U.S. patents.

In Symantec's February 7, 2001 press release announcing the issuance of '531 and '407, it states, "[T]he technology may also be used to update general computer readable files, which may include data files, program files, database files, graphics files, or audio files. As the patent holder, Symantec is the only company authorized to incorporate this sophisticated technology into its best-of-breed products."

Clearly, from the statement above, Symantec is looking to claim the broadest claim interpretation possible. The technology developed by Symantec has helped the company create market-leading products, such as Norton AntiVirus. However, from an intellectual property licensing perspective, the abundance of uncited prior and concurrent art may strongly limit Symantec's ability to license this technology in the long term.

M•CAM's Patent Glossary

Aligned Sector: The business sector in which the product(s) resulting from the patent(s) is currently or intended to be sold.

Applicant: The person or corporation that applies for a patent with the intent to use, manufacture or license the technology of the invention; under U.S. law, except in special situations, the applicant(s) must be the inventor(s).

Application: Complete papers submitted to the U. S. Patent and Trademark Office seeking a patent including oath, specification, claims, and drawings. This usually does not signify a Provisional Patent Application, but only a regular patent application.

Art: The established practice and public knowledge within a given field of technology. This also identifies a process or method used to produce a useful result. A term used in consideration of the problem of patentable novelty encompassing all that is known prior to the filing date of the application in the particular field of the invention.

Assignee: The person(s) or corporate body to whom the law grants or vests a patent right. This refers to the person or corporate entity that is identified as the receiver of an assignment.

Business Method Patent: A patent that controls the *way* a business process is undertaken. The issuance of these patents by the United States Patent and Trademark Office (USPTO) is new and controversial, since many allege that it is unfair to allow a patent on a way of doing business.

Citation: This may include patents or journal articles that the applicant or examiner deems relevant to a current application. A reference to legal authorities or a prior art documentation are examples of a citation.

Claim: The language in a patent application that defines the legal scope of the patent. Most patents have numerous claims. This is typically the single most important section in the application.

Concurrent Art: Concurrent art occurs when related patent applications are being examined by the USPTO at the same time. It is difficult for any company or inventor to know, at the time they file for a patent, whether a "related" patent application exists.

Filing Date: The date when a properly prepared application reaches the patent office in complete form.

Innovation Cycle: A description of the commercialization timeframe for the intellectual property.

Innovation Space: M•CAM's representation of the innovation(s) that occur before, during, and after the pending period of the subject patent. The innovation space is the first place to look for patents that are closely related to the subject patent and that may impact the defensibility of the subject patent or create opportunities for patent licensing.

Issue Date: Not to be confused with the filing date, which is the date the patent application was physically received by the U.S. Patent and Trademark Office. This is the date on which the patent actually issues.

Non-Aligned Sector: Any sector in which the patent can be used or sold, other than the sector for which the patent or resultant product was invented or intended.

Pod: A group of patents owned by a company that should be treated as a single unit of innovation (e.g., a certain group of patents that comprise a single product or multiple related products).

Prior Art: Any relevant patent that was issued before the patent being analyzed. If this previous patent was specifically mentioned in the new patent's application, the previous patent is referred to as "cited prior art". If it was NOT mentioned, then that previous patent is referred to as "uncited prior art".

Subsequent Art: Any patent that has a filing date with the USPTO that is after the issuance date of the subject patent. This subsequent art patent may or may not have cited (see "Citation" above) the subject patent. As subsequent art represents more recent innovation than the subject patent, it has great potential to shrink the market opportunity for the subject patent.